



Llywodraeth Cymru  
Welsh Government

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Chair, Legislation, Justice and Constitution Committee

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Dear Huw and John,

I am writing to inform the Committees on progress in relation to the Elections Bill (the Bill) which is currently progressing through the House of Lords Committee stage. The UK Government tabled amendments for consideration and make provision falling within the legislative competence of the Senedd. Therefore, I have today laid a Supplementary Legislative Consent Memorandum (Memorandum No.2) (SLCM) before the Senedd.

In my letter of 16 February I informed you I would be giving further consideration to these amendments alongside the approach to the wider Bill. Unfortunately due to negotiations and discussions with the UK Government in respect of a number of the Bill's provisions, I am only now in a position to provide you with an update. I apologise for the lateness of this update, but hope you will agree with me we are now in a far better position in relation to this Bill.

As you will recall, following the introduction of the Bill in July 2021 I laid an LCM on 9 September 2021. The LCM confirmed I could not recommend consent to the Bill as introduced, and would prefer to consider some of the issues raised through Senedd legislation.

I'm pleased to report as a result of positive engagement with the UK Government, we have successfully sought carve out amendments to the Bill in order to remove devolved Welsh elections from the scope of various provisions. As a result, my previous concerns, set out in the original LCM, regarding undue influence, the Electoral Commission, notional expenditure and other political finance measures have been addressed by the UK Government amendments tabled on 28 February.

A summary of these are below:

### ***Undue Influence - Clause 8 and Schedule 5***

The tabled amendments insert a new section 114A in the Representation of the People Act 1983 (the 1983 Act) which provides that the new undue influence offence as inserted by that provision only applies to UK Parliamentary elections and local government elections in England. The existing offence of undue influence in section 115 of the 1983 Act is therefore preserved for Senedd elections and local government elections in Wales.

There is a situation where section 114A of the 1983 Act will continue to be relevant to Senedd elections. This is due to Schedule 1A to the Government of Wales Act 2006 (GOWA) which disqualifies a person from being a Senedd Member or a candidate in an election to be a Senedd Member in circumstances where they cannot be elected to the House of Commons as a result of committing a corrupt practice under the 1983 Act. As the new offence in section 114A will meet the definition of a 'corrupt practice', individuals who are prevented from being a Member of the UK Parliament as a result of committing that offence will also be prevented from being a Senedd Member.

In our view it is appropriate that the Bill does not amend Schedule 1A to GOWA to change its effect. This Schedule was recently inserted into GOWA by the Senedd and Elections (Wales) Act 2020. Changing the criteria by which individuals are disqualified from being a Senedd Member would represent a significant change to the current regime. We will in due course, fully consider the implications arising from section 114A of the 1983 Act with a view to determining whether it may be necessary to bring forward Senedd legislation to amend the existing regime.

### ***Clause 14 - Strategy and Policy Statement***

The tabled amendments amend the new section 4(3A) to be inserted in the Political Parties Elections and Referendums Act 2000 (PPERA) by carving out Welsh devolved functions from the scope of any Strategy and Policy Statement which is to be published by the Secretary of State under that provision.

### ***Clause 18(1) - Notional expenditure: use of property etc on behalf of candidates and others***

The tabled Government amendment addresses the concerns previously raised by the Welsh Government by amending section 90C of the 1983 Act so provision is no longer made in relation to the application of the rules on campaign expenditure for candidates at local government elections in Wales.

### ***Clause 19 - Codes of practice on expenses***

Clause 19(2) as originally drafted would have modified the functions of the Welsh Ministers in relation to devolved elections by amending the power of the Welsh Ministers to issue a code of practice by the Electoral Commission under paragraph 14A of Schedule 4A to the 1983 Act, as well as the Welsh Ministers power to designate the date on which a code of practice under paragraph 14A comes into force. The amendments tabled on 28 February address the concerns raised by the Welsh Government by omitting functions conferred on the Welsh Ministers in relation to devolved elections.

### ***Clause 20 - Authorised persons not required to pay expenses through election agent***

Clause 20(1) amended section 73 of the 1983 Act so that expenses incurred under section 75 in relation to local government elections by a third party do not have to be paid by the election agent. The tabled amendment carves out expenses incurred in relation to local government elections in Wales from the amendments to the 1983 Act.

#### ***Clause 24 - Restriction on which third parties may incur controlled expenditure***

The original provisions inserted a new section 89A into PPERA which had the effect of restricting which third parties may incur controlled expenditure. The original provisions would have captured expenditure incurred in relation to Senedd elections. Those elections have been carved out from the provisions by the amendments tabled on 28 February which limit the scope of the clause to UK parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 25 - Third parties capable of giving notification for purposes of Part 6 of PPERA***

The original provisions conferred a regulation making power on the Secretary of State alone to amend section 88(2) PPERA to the effect of amending by way of adding, removing or varying the descriptions of third parties. The tabled amendment addresses our concerns by limiting the exercise of the Secretary of State's regulation making power for the purposes of periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 26 - Recognised third parties: changes to existing limits etc***

This provision amended various sections of PPERA to require third-party campaigners to give a notification to the Electoral Commission at a lower level of spending than is currently required. The tabled amendments address our concerns by ensuring that the provision only applies in relation to periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

#### ***Clause 27 - Joint campaigning by registered parties and third parties***

This clause amended section 94(6) of PPERA to make provision so that third-party campaigners and political parties who are working together on a joint campaign will both report any associated spending and identify the parties involved in the arrangement. The tabled amendments address our concerns by ensuring that the provision only applies in relation to periods involving parliamentary general elections or general elections to the Northern Ireland Assembly.

I have laid an SLCM because amendments have been tabled to the Digital Imprints provisions which, in my view engage the requirement for Senedd consent. They are summarised below and are detailed further in the SLCM:

#### ***Digital Imprints***

As set out in the original LCM, our view on this remains that whilst there is no disagreement with the policy intent, this concerns electoral transparency which, so far as devolved elections are concerned, falls within devolved competence and requires Senedd consent. A number of UK Government amendments to the digital imprint provisions were made to the Bill during Commons Report Stage. Additional amendments were tabled on 28 February in advance of House of Lords Committee stage. The amendments contain provision which applies to devolved elections and taken as a whole can be viewed as relating to a non-reserved matter, namely intending to regulate transparency of electoral material published

online and to ensure that readers and recipients of that electoral material understand who has published material online.

### ***Intimidation (Disqualification)***

Another area that the UK Government has not looked to carve out Wales is in respect of Part 5 of the Bill 'Disqualification of Offenders for Holding Elective Office, etc.' Our position towards these provisions is set out in paragraphs 29 to 33 of the original LCM and paragraphs 55 to 58 of the SLCM. Part 5 introduces a new electoral sanction in the form of a disqualification order which is intended to provide additional protection to those who participate in elections and contribute to the political debate, and deter individuals from carrying out acts of intimidation against them.

We have stated we are not opposed in principle to the provisions on intimidation, as it is important to protect participants in the democratic process.

It is the UK Government's view that the intimidation disqualification order relates to the reserved matter of criminal proceedings (which includes sentencing) and so the legislative consent process is not engaged. As such, the UK Government stated that it would not be considering an amendment to remove the application of the disqualification order to devolved elections and elected offices in Wales.

We disagree with the UK Government's position that legislative consent is not required. The relevant Bill clauses are making provision with regard to devolved matters due to the impact that they have on qualification for membership of the Senedd and local authorities in Wales. We firmly maintain the position that every legislature should have the freedom to determine its own disqualification regime for the elections for which it is responsible.

Given our disagreement with the UK Government in these two areas relate to competence, rather than policy intent, we recommend the Senedd give consent in these two areas. In so doing, we maintain that we are able to further consider these issues in consultation with stakeholders in Wales and, if necessary, consider the options for bringing forward legislation in the future.

I am copying this letter to all Members of the Senedd.

Yours sincerely,

A handwritten signature in blue ink that reads "Mick Antoniw". The signature is written in a cursive style and is underlined with a single horizontal line.

**Mick Antoniw AS/MS**

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution